

1988 JUVENILE JUSTICE
AND DELINQUENCY PREVENTION ACT
COMPLIANCE MONITORING REPORT

STATE OF ALASKA

Department of Health and Social Services

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STATE MONITORING REPORT

A. GENERAL INFORMATION

1. NAME AND ADDRESS OF STATE MONITORING AGENCY

Alaska Division of Family and Youth Services
P.O. Box H-05
Juneau, AK 99811-0630

2. CONTACT PERSON REGARDING STATE REPORT

Name: Donna Schultz Phone #: (907) 465-2113

3. DOES THE STATE'S LEGISLATIVE DEFINITION OF CRIMINAL-TYPE OFFENDER, STATUS OFFENDER, OR NONOFFENDER DIFFER WITH THE OJJDP DEFINITION CONTAINED IN THE CURRENT OJJDP FORMULA GRANT REGULATION?

Alaska's definition of "delinquent minor" is congruent with the OJJDP definition of "criminal-type offender" contained in 28 CFR Part 31.304(g). Alaska's definition of "child in need of aid" encompasses both "status offenders" and "nonoffenders" as defined in 28 CFR Part 31.304(h) and (i). The relevant Alaska definitions are contained in AS 47.10.010 and AS 47.10.290, both of which are appended.

Although Alaska's legislative definitions are consistent with those contained in the OJJDP Formula Grant Regulation, the OJJDP Office of General Counsel has issued a Legal Opinion Letter dated August 30, 1979 interpreting Section 223(a)(12)(A) of the JJDP Act to require "that an alcohol offense that would be a crime only for a limited class of young adult persons must be classified as a status offense if committed by a juvenile." Because Alaska law defines possession or consumption of alcohol by persons under 21 years of age as a criminal offense (AS 04.16.050), the state's definitions are inconsistent with the current OJJDP interpretation of the definitions of criminal-type offender and status offender which are contained in the Formula Grant Regulation.

4. DURING THE STATE MONITORING EFFORT WAS THE FEDERAL DEFINITION OR STATE DEFINITION FOR CRIMINAL-TYPE OFFENDER, STATUS OFFENDER AND NONOFFENDER USED?

Although state definitions are congruent with the definitions contained in the Formula Grant Regulation, juveniles accused of or adjudicated delinquent for possession or consumption

of alcohol (or "minor consuming alcohol," as the offense described in AS 04.16.050 is commonly called in both formal and informal contexts) have been defined as status offenders for purposes of 1988 JJDP monitoring, pursuant to OJJDP's interpretation of Section 223(a)(12)(A) of the JJDP Act.

SECTION 223(a)(12)(A)

B. REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

1. BASELINE REPORTING PERIOD: Calendar Year 1976

CURRENT REPORTING PERIOD: Calendar Year 1988

2. NUMBER OF PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 14 | 13 | 1 |
| Current Data* | 100 | 100 | 0 |
| Juvenile Detention Centers | 5 | 5 | 0 |
| Juvenile Training Schools** | 0 | 0 | 0 |
| Adult Jails | 17 | 17 | 0 |
| Adult Correctional Facilities | 3 | 3 | 3 |
| Adult Lockups* | 75 | 75 | 0 |

*Three additional adult lockups listed in the 1987 Jail Removal Plan were closed prior to 1988.

**Two facilities (McLaughlin Youth Center and Fairbanks Youth Center) serve as both juvenile detention centers and juvenile training schools. Because all juveniles admitted to these facilities must be processed through the respective detention centers, separate monitoring of the training schools would be redundant.

3. NUMBER OF FACILITIES IN EACH CATEGORY REPORTING ADMISSION AND RELEASE DATA FOR JUVENILES TO THE STATE MONITORING AGENCY

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 14 | 13 | 1 |
| Current Data | 51 | 51 | 0 |
| Juvenile Detention Centers | 5 | 5 | 0 |
| Juvenile Training Schools | 0 | 0 | 0 |
| Adult Jails | 17 | 17 | 0 |
| Adult Correctional Facilities | 3 | 3 | 0 |
| Adult Lockups | 26 | 26 | 0 |

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD FOR THE PURPOSE OF VERIFYING SECTION 223(a)(12)(A) DATA.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Current Data | 28 | 28 | 0 |
| Juvenile Detention Centers | 2 | 2 | 0 |
| Juvenile Training Schools | 0 | 0 | 0 |
| Adult Jails | 5 | 5 | 0 |
| Adult Correctional Facilities | 1 | 1 | 0 |
| Adult Lockups | 20 | 20 | 0 |

5. TOTAL NUMBER OF ACCUSED STATUS OFFENDERS AND NONOFFENDERS HELD FOR LONGER THAN 24 HOURS IN PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data* | 485 | 485 | 0 |
| Current Data | 7 | 7 | 0 |
| Juvenile Detention Centers | 4 | 4 | 0 |
| Juvenile Training Schools | 0 | 0 | 0 |
| Adult Jails | 3 | 3 | 0 |
| Adult Correctional Facilities | 0 | 0 | 0 |
| Adult Lockups | 0 | 0 | 0 |

*The monitoring report format for the baseline year did not distinguish between accused and adjudicated status offenders and nonoffenders. Baseline data for both accused and adjudicated status offenders and nonoffenders are included in item B5.

6. TOTAL NUMBER OF ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS HELD IN PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES FOR ANY LENGTH OF TIME DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data | 2 | 2 | 0 |
| Juvenile Detention Centers | 1 | 1 | 0 |
| Juvenile Training Schools | 0 | 0 | 0 |
| Adult Jails | 1 | 1 | 0 |
| Adult Correctional Facilities | 0 | 0 | 0 |
| Adult Lockups | 0 | 0 | 0 |

*The monitoring report format for the baseline year did not distinguish between accused and adjudicated status offenders and nonoffenders. Baseline data for both accused and adjudicated status offenders and nonoffenders are included in item B5.

7. TOTAL NUMBER OF STATUS OFFENDERS HELD IN ANY SECURE DETENTION OR CORRECTIONAL FACILITY PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data | 2 | 2 | 0 |
| Juvenile Detention Centers | 2 | 2 | 0 |
| Juvenile Training Schools | 0 | 0 | 0 |
| Adult Jails | 0 | 0 | 0 |
| Adult Correctional Facilities | 0 | 0 | 0 |
| Adult Lockups | 0 | 0 | 0 |

*Data for status offenders determined to have violated valid court orders were not included in the monitoring report format for the baseline year.

Has the State monitoring agency verified that the criteria for using this exclusion have been satisfied pursuant to the current OJJDP regulation?

Yes.

If yes, how was this verified (State law and/or judicial rules match the OJJDP regulatory criteria, or each case was individually verified through a check of court records)?

For the two instances of detention in which the valid court order exception was applied, photocopies of pertinent court records were obtained with the assistance of the Division of Family and Youth Services (DFYS) office handling the case. The documents were examined to ensure that the criteria for use of the valid court order exception were satisfied.

C. DE MINIMIS REQUEST

1. CRITERION A -- THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

Number of accused status offenders and nonoffenders held in excess of 24 hours and the number of adjudicated status offenders and nonoffenders held for any length of time in secure detention or secure correctional facilities.

| <u>ACCUSED</u> | | <u>ADJUDICATED</u> | | <u>TOTAL</u> |
|----------------|---|--------------------|---|--------------|
| 7 | + | 2 | = | 9 |

Total juvenile population of the State under age 18 according to the most recent available U.S. Bureau of Census data or census projection.

166,294 juveniles

(Source: Alaska Population Overview: 1986 and Provisional 1987 Estimates, Alaska Department of Labor, August, 1989)

If the data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data.

| | <u>ACCUSED</u> | | <u>ADJUDICATED</u> | | <u>TOTAL</u> |
|-------|----------------|---|--------------------|---|--------------|
| Data: | 24 | + | 53 | = | 77 |

Statistical Method of Projection:

Complete data for Calendar Year 1988 were available for all but 14 of the 51 facilities from which data deemed adequate for monitoring purposes were obtained, so projection of data to cover the full 12-month period for these facilities was unnecessary. Projection of data to cover the remainder of Calendar Year 1988 for 14 adult lockups at which data collection was completed during November and December was accomplished by computing, for each facility, the proportion of the year which had elapsed prior to the site visit and weighting each instance of detention at the facility by a factor equal to the reciprocal of that proportion. Thus, for example, each instance of juvenile detention at the lockup in Unalakleet was weighted by a factor of 1.12 (366 days in the year divided by 327 days elapsed prior to the November 22nd site visit). With this weighting procedure, instances of noncompliant detention at each of these 14 facilities during the

last few weeks of 1988 (i.e. after data collection was completed) are projected to have occurred at a rate identical to the rate of noncompliant detention during that portion of the year for which data were available.

Data for 49 adult lockups whose records were determined to be inadequate for monitoring purposes were projected by assigning a weight of 2.885 (the reciprocal of the proportion of all adult lockups represented by those included in the analysis) to each case involving detention of a juvenile in the 26 adult lockups from which adequate data were obtained. This method of projection is statistically valid to the extent that the lockups from which adequate data were obtained are representative of all lockups in the monitoring universe. Although the number of adult lockups which were able to submit adequate data was too small to permit random (and therefore representative) sampling (all such facilities were included in the analysis), it is believed that facilities which do not maintain adequate records fail to do so because they in fact detain very few individuals, either adult or juvenile, and are therefore unlikely to detain more juveniles than those which do. Any error in the method used to project data for facilities which were unable to submit adequate data should therefore result in a higher number of noncompliant cases than actually occurred in these facilities.

In addition to projection of data for facilities for which less than a full year of data were collected and for facilities which did not maintain adequate records in 1988, it was necessary to project data regarding duration of detention for 18 cases for which such data were inadequate and it was also necessary to project data regarding the type of offender (i.e. accused/adjudicated criminal-type offender, accused/adjudicated status offender) for 51 instances of juvenile detention in which the reason for detention was not adequately specified.

Projection of data regarding duration of detention for the 18 instances of detention of accused status offenders where records were insufficient to determine whether the 24-hour grace period permitted under 28 CFR Part 31.303(f)(5)((i)(C) had been exceeded proceeded as follows: The proportion of cases in which detention extended beyond the 24-hour grace period was computed for all cases involving detention of status offenders and for which all variables used in computation of the duration of detention were available. The 18 cases for which duration of detention could not be determined were each assigned a weight of .043, the proportion of noncompliant instances among all cases involving detention of status offenders for which all pertinent data were available.

Finally, data projection for 51 instances of juvenile detention in adult jails where the reason for detention was inadequately specified required computation of the proportion of

accused and adjudicated status offenders among all instances of juvenile detention in such facilities for which records were sufficiently complete to permit identification of the type of offender. Each of these cases was then assigned a weight of .4975 (the proportion of accused status offenders among all juveniles detained in adult jails where records were sufficiently complete to permit identification of the type of offender) in calculations employed to determine the total number of accused status offenders held over 24 hours (item B5). In calculations used to determine the total number of adjudicated status offenders held for any length of time (item B6), these 51 cases were each assigned a weight of .0025 (the proportion of adjudicated status offenders among all juveniles detained in adult jails where records were sufficient for identification of the type of offender).

This weighting procedure - involving data projection for facilities which were unable to submit adequate data, for facilities from which data for less than the full year were obtained, for cases lacking sufficient data to determine the duration of detention and, finally, for cases in which data were insufficient for identification of the type of offender - was implemented by assigning a weight equivalent to the product of the four separate weights to each case. Because the product of the four weights was less than 1.00 for the majority of weighted cases (i.e. those in which either offense data or data related to duration of detention were inadequate), the projected number of noncompliant cases is considerably smaller than the number of unweighted cases upon which it is based.

Calculation of status offender and nonoffender detention and correctional institutionalization rate per 100,000 population under age 18.

| | | | |
|--|---|----------------|---------------|
| Status offenders and nonoffenders held (total) | = | 9 | (a) |
| Population under age 18 | = | 166,294 | (b) |
| 9 (a) | / | 166,294 (b) | = 5.4 rate |

2. CRITERION B -- THE EXTENT TO WHICH THE INSTANCES OF NONCOMPLIANCE WERE IN APPARENT VIOLATION OF STATE LAW OR ESTABLISHED EXECUTIVE OR JUDICIAL POLICY.

Despite the continued efforts by the Division of Family and Youth Services (DFYS) to eliminate detention of status offenders in Alaska, nine instances of noncompliant detention occurred in 1988. Eight of the nine violations involved juveniles accused of

or adjudicated delinquent for possession or consumption of alcohol, which is a criminal offense when committed by any person under 21 years of age in Alaska. Three instances of noncompliant detention of juveniles accused of possession or consumption of alcohol occurred in adult jails and lockups which fail to provide adequate separation of juvenile and adult inmates and were therefore violative of AS 47.10.130 and/or AS 47.10.190, both of which require such separation. Detention of children accused of minor consuming alcohol is now prohibited in DFYS facilities (except in accordance with AS 47.37.170, which provides for protective custody of persons who are incapacitated by alcohol). Four instances of noncompliant detention of children accused of possession or consumption of alcohol were in violation of this policy because they occurred at juvenile detention centers. Detention of children who have been adjudicated delinquent upon a charge of minor consuming alcohol is not affected by the new policy, so the one instance of detention in a DFYS facility of a child who had been adjudicated delinquent for minor consuming alcohol was not in violation of this policy.

The one remaining instance of noncompliant detention involved a juvenile who had been adjudicated a child in need of supervision in another state. This juvenile was arrested pursuant to a warrant issued by a court in her home state. She was initially detained in the adult jail at Valdez, then was transferred to McLaughlin Youth Center prior to being returned home. Detention of this juvenile in an adult jail which does not provide adequate separation of juvenile and adult offenders was violative of state laws concerning separation (referenced above). Detention of the same juvenile at a juvenile detention center pending return to her home state, however, appears to have been consistent with state law.

In summary, of the nine instances of noncompliant detention, there were only two which were not in violation of either state law or established executive policy, and one of these two instances involved an out-of-state runaway detained pending return to her home state.

3. CRITERION C -- THE EXTENT TO WHICH AN ACCEPTABLE PLAN HAS BEEN DEVELOPED.

- a. Do the instances of noncompliance indicate a pattern or practice?

No. Detention and correctional facilities in Alaska continued in 1988 to detain juveniles charged with the offense of minor consuming alcohol, but a pattern of noncompliant detention of such juveniles was not observable in any facility. Only one facility detained more than a single juvenile in violation of the deinstitutionalization requirement in 1988. McLaughlin Youth

Center detained two juveniles accused of possession or consumption of alcohol beyond the 24-hour grace period permitted for detention of accused status offenders, and two adjudicated status offenders (including one juvenile who had been adjudicated delinquent for possession or consumption of alcohol and one out-of-state runaway who had initially been detained at an adult jail and who was transferred to McLaughlin Youth Center pending return to her home state).

An administrative policy restricting detention in facilities operated by the Division of Family and Youth Services (DFYS) of juveniles charged with consumption of alcohol (the offense which accounted for the majority of noncompliant instances) was implemented in December, 1987 by the Youth Corrections Administrator. This policy contributed to the reduction in the number of noncompliant detentions of accused status offenders at juvenile detention centers from seventeen in 1987 to only four in 1988. It is anticipated that the policy will continue to be effective in minimizing the incidence of noncompliant detention of status offenders at these facilities.

- b. Do the instances of noncompliance appear to be sanctioned or allowable by State law, established executive policy, or established judicial policy?

Three instances of noncompliant detention of accused or adjudicated status offenders occurred in adult jails and lockups. These instances of noncompliance were all inconsistent with AS 47.10.130 (which prohibits detention of juveniles pending hearings in delinquency proceedings in facilities which fail to provide adequate separation of juvenile and adult inmates) and/or AS 47.10.190 (which prohibits non-separated detention following court-ordered commitment to the custody of the Department of Health and Social Services). All four instances of noncompliance involving detention in Division of Family and Youth Services (DFYS) facilities of juveniles accused of possession or consumption of alcohol were violative of an administrative policy, implemented in December, 1987 by the Youth Corrections Administrator, which restricted detention in DFYS facilities of juveniles charged with this offense. One instance of detention at a DFYS facility of a juvenile who had previously been adjudicated for possession or consumption of alcohol does not appear to have been in violation of this policy. Finally, detention at an adult jail of an out-of-state runaway was violative of the state separation laws referenced above, but detention of this same juvenile at a DFYS facility following transfer from the adult jail appears to have been consistent with state law.

- c. Describe the State's plan to eliminate the noncompliant incidents within a reasonable time.

In December, 1987, the Division of Family and Youth Services (DFYS), the executive branch agency responsible for operation of youth detention facilities and for juvenile intake, probation and institutional services, instituted a policy change in its facilities which has nearly eliminated the noncompliant detention of youth in these facilities in its first year of implementation. The policy prohibits admission of youth charged solely with possession or consumption of alcohol except when they meet the conditions for protective custody as outlined in the state's Uniform Alcoholism and Intoxication Treatment Act.

Detention for protective custody under AS 47.37.170 is permissible only if all viable options such as the person's home, shelter, and public and private medical care facilities are found to be unavailable. A physician's statement certifying the need for protective custody must also be obtained prior to admittance. This policy, which became effective in December, 1987, contributed to a substantial reduction in the frequency of noncompliant detention at facilities operated by DFYS in 1988 and is expected to continue be effective in minimizing the incidence of noncompliant detention of status offenders at these facilities. While the policy only pertains to the five facilities operated by DFYS, this is the most effective means of accomplishing compliance with the JJDP mandate. These five facilities accounted for an estimated 74 percent of detentions of youth in 1988.

In addition to the change in executive policy discussed above, the Division of Family and Youth Services is attempting to reduce instances of noncompliance by establishing nonsecure attendant care shelters in communities where noncompliant instances are most frequent. Development of this nonsecure alternative to detention of status offenders and nonoffenders in communities where noncompliant instances have been most common is a central component of Alaska's strategy to eliminate instances of noncompliance with the deinstitutionalization requirement of the JJDP Act. Twelve such shelters are now in operation in areas where noncompliant detention has been problematic in the past, and the state has recently committed resources to fund three additional sites.

Another aspect of Alaska's plan to eliminate noncompliant incidents entails an effort to achieve modification of legislative provisions which permit secure detention of juveniles charged with minor consuming alcohol. Re-classification of this offense as a violation or, alternatively, as a summons-only offense would remove any basis in state law for detention of juveniles accused of consuming alcohol except where it is consistent with the protective custody provisions contained in AS 47.37.170.

Finally, the Division of Family and Youth Services is working with detention facilities to curtail record keeping practices which are believed to artificially inflate the number of reported instances of noncompliance. It has come to the attention of DFYS that some facilities create a booking record for each person brought to the facility by law enforcement officials, even if the person is not admitted into secure confinement. Because non-secure detention in an office or reception area while arrangements are being made for release to parents, etc. is not in violation of the deinstitutionalization mandate, records which fail to distinguish between persons who are confined securely and those who are not placed in a secure area contributes to erroneous measurement of the extent of noncompliance. There is also evidence to suggest that improper recording of offense information produces overcounting of deinstitutionalization violations at some facilities. At Johnson Youth Center, for example, offense information for each case is entered from the report completed by the arresting officer. The arrest report, however, only indicates the legally most serious offense; when a juvenile is charged with minor consuming alcohol (a class A misdemeanor under Alaska law) in addition to disorderly conduct or some other class B misdemeanor, only the alcohol charge - the legally more serious offense - is recorded, and this may result in erroneous classification of some juveniles as status offenders and artificial inflation of the total number of deinstitutionalization violations at the facility. The result, again, may be overcounting of the number of deinstitutionalization violations. The Division of Family and Youth Services is attempting to correct these and other sources of erroneous compliance data by working with facilities to improve record keeping practices and by providing all facilities with detailed instructions for accurate recording of case information. As part of a broad-based public education campaign, specific materials have been developed, targeting law enforcement agencies and the issue of record keeping practices.

4. OUT OF STATE RUNAWAYS

1

5. FEDERAL WARDS

0

6. RECENTLY ENACTED CHANGE IN STATE LAW

In May, 1988, the Alaska Legislature passed a bill specifying the conditions under which runaway juveniles may be detained. This legislation, which became effective in October, 1988, was explicitly designed to comply with the deinstitutionalization

requirement of the JJDP Act. The law specifies that "[a] minor may be taken into emergency protective custody by a peace officer and placed into temporary detention in a juvenile detention home in the local community if there has been an order issued by a court under a finding of probable cause that (1) the minor is a runaway in wilful violation of a valid court order..., (2) the minor's current situation poses a severe and imminent risk to the minor's life or safety, and (3) no reasonable placement alternative exists within the community" (AS 47.10.141). The statute clearly forbids detention of a runaway juvenile "in a jail or secure facility other than a juvenile detention home" and limits the duration of such detention to 24 hours if no criminal-type offense is charged.

This statute articulates the circumstances under which status offenders may legally be detained. It permits detention of runaway juveniles in juvenile detention facilities (but not in adult jails, lockups or correctional facilities) upon a finding that the child violated a valid court order and restricts such detention to a maximum of 24 hours. No other detention of status offenders (except those accused of possession or consumption of alcohol) is permitted under state law.

By clearly delineating the circumstances under which status offenders may lawfully be detained in Alaska, this statutory change will serve notice to law enforcement officials that detention of runaway juveniles under circumstances which do not comply with the JJDP Act is unlawful under state law. This change is certain to have a positive impact on the state's ability to achieve full compliance within a reasonable time.

SECTION 223(a)(12)(B)

D. PROGRESS MADE IN ACHIEVING REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

1. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(12)(A).

Alaska's progress in achieving removal of status offenders and nonoffenders from secure detention and correctional facilities has been excellent with respect to juveniles accused of or adjudicated for conduct which is not prohibited by Alaska criminal law. In comparison with the 1976 baseline, when 485 status offenders (excluding those charged with the offense of minor consuming alcohol, which was at that time considered a criminal-type offense for monitoring purposes) were detained in secure facilities, only one instance of noncompliance with the deinstitutionalization requirement in 1988 involved a child who

was not accused of or adjudicated delinquent for possession or consumption of alcohol.

It is not possible to accurately measure Alaska's progress in achieving removal from secure confinement of juveniles charged with the offense of minor consuming alcohol, which is a misdemeanor when committed by a person under 21 years of age in Alaska but which must now be treated as a status offense for monitoring purposes under the current OJJDP interpretation of Section 223(a)(12)(A) of the JJDP Act. Juveniles accused of or adjudicated for this offense were not included among the 485 status offenders detained in violation of the deinstitutionalization requirement in 1976, so it is not possible to gauge the progress reflected in the data for 1988, which include eight instances of noncompliant detention involving juveniles accused of or adjudicated delinquent for this offense. It is noteworthy, however, that despite inclusion of these cases among deinstitutionalization violations and the addition of 86 secure detention and correctional facilities to the monitoring universe, the overall incidence of noncompliant detention of status offenders has been reduced by 98 percent since 1976.

Perhaps the best indicator of Alaska's progress in achieving removal of status offenders and nonoffenders from secure detention and correctional facilities is the fact that, in just one year since implementation of its revised Jail Removal Plan in December, 1987, noncompliant detention of status offenders was reduced a full 78 percent, from 41 instances in 1987 to just nine in 1988.

2. NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS WHO ARE PLACED IN FACILITIES WHICH (A) ARE NOT NEAR THEIR HOME COMMUNITY; (B) ARE NOT THE LEAST RESTRICTIVE APPROPRIATE ALTERNATIVE; AND, (C) DO NOT PROVIDE THE SERVICES DESCRIBED IN THE DEFINITION OF COMMUNITY-BASED.

All violations of Section 223(a)(12)(A) in 1988 involved placement in secure facilities. The JJDP definition of "community based" indicates that the term refers to "a small, open group home or other suitable place...." (Section 103(1)). Therefore, all status offenders detained in violation of the deinstitutionalization requirement in 1988 were placed in facilities fitting the above criteria.

SECTION 223(a)(13)

E. SEPARATION OF JUVENILES AND ADULTS

1. BASELINE REPORTING PERIOD: Calendar Year 1976

CURRENT REPORTING PERIOD: Calendar Year 1988

2. WHAT DATE HAS BEEN DESIGNATED BY THE STATE FOR ACHIEVING COMPLIANCE WITH THE SEPARATION REQUIREMENTS OF SECTION 223(a)(13)?

December 31, 1988

3. TOTAL NUMBER OF FACILITIES USED TO DETAIN OR CONFINED BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE PAST TWELVE (12) MONTHS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 12 | 12 | 0 |
| Current Data | 38 | 38 | 0 |
| Adult Jails | 16 | 16 | 0 |
| Adult Correctional Facilities | 2 | 2 | 0 |
| Adult Lockups* | 20 | 20 | 0 |

*Includes projection for facilities not submitting data. (See Appendix I for data projection method).

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD TO CHECK THE PHYSICAL PLANT TO ENSURE ADEQUATE SEPARATION.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | n/a | n/a | n/a |
| Current Data | 31 | 31 | 0 |
| Adult Jails | 5 | 5 | 5 |
| Adult Correctional Facilities | 1 | 1 | 1 |
| Adult Lockups | 25 | 25 | 0 |

5. TOTAL NUMBER OF FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE AND ADULT OFFENDERS WHICH DID NOT PROVIDE ADEQUATE SEPARATION OF JUVENILES AND ADULTS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 5 | 5 | 0 |
| Current Data | 37 | 37 | 0 |
| Adult Jails | 15 | 15 | 0 |
| Adult Correctional Facilities | 2 | 2 | 3 |
| Adult Lockups* | 20 | 20 | 0 |

*Includes projection for facilities not submitting data. (See Appendix I for data projection method).

6. TOTAL NUMBER OF JUVENILES NOT ADEQUATELY SEPARATED IN FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE REPORT PERIOD.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 824 | 824 | 0 |
| Current Data | 564 | 564 | 0 |
| Adult Jails | 447 | 447 | 0 |
| Adult Correctional Facilities | 63 | 63 | 0 |
| Adult Lockups | 54 | 54 | 0 |

7. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(13).

Alaska's commitment to achieving full compliance with Section 223(a)(13) of the JJDP Act is evidenced by the creation of a full-time staff position to coordinate the state's efforts to achieve compliance, the construction of a new juvenile detention facility in Bethel and the re-opening of the Nome Youth Facility, the development of nonsecure attendant care shelters in 12 communities in which noncompliance with the separation requirement of the JJDP Act has been most persistent, and continuing efforts to educate law enforcement officials and the public about the importance of separating juveniles from incarcerated adults. These efforts have resulted in a 32 percent reduction in the number of noncompliant incidents below the level of such incidents in 1976, the baseline year. Alaska's progress in achieving the requirements of Section 223(a)(13) has been especially significant since the Division of Family and Youth Services (DFYS) implemented its revised Jail Removal Plan in December, 1987. In just one year following submission of that plan, noncompliant incidents have been reduced by a full 30 percent.

Alaska law, like the JJDP Act, prohibits detention of any juvenile in a facility which also houses adult prisoners, "unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime" (AS 47.10.130). Despite this legislative prohibition, however, adult jails, lockups and correctional facilities continue to admit juveniles in circumstances where no adequate alternative is available. Most of these facilities are in geographically remote rural areas which lack alternatives to such detention and immediate transfer of juveniles to appropriate facilities is often impossible due to unavailability of air

transportation and/or inclement weather. Temporary detention in adult facilities in these communities may often result in less harm to the juvenile than would any available alternative.

Two additional barriers which prevent Alaska from making more rapid progress toward full compliance with the separation requirement are (a) a one-third increase in Alaska's juvenile population since the baseline for measuring compliance was established and (b) the expansion of the monitoring universe from 14 facilities in the baseline year to 100 facilities (including 95 facilities which house adults) in 1988. These factors have confounded the state's efforts to reduce the reported incidence of noncompliant juvenile detention at adult facilities which are monitored for compliance with the separation requirement, although available evidence suggests that the actual incidence of noncompliant juvenile detention - in facilities which were monitored in the baseline year as well as those which have only recently been identified - has probably decreased substantially.

Finally, the Division of Family and Youth Services is working with facilities to curtail record keeping practices which are believed to artificially inflate the number of reported instances of noncompliance. It has come to the attention of DFYS that some facilities create a booking record for each person brought to the facility by law enforcement officials, even if the person is not admitted into secure confinement. Because nonsecure detention in an office or reception area while arrangements are being made for release to parents, etc. is not in violation of the separation mandate, records which fail to distinguish between persons who are confined securely and those who are not placed in a secure area contributes to erroneous measurement of the extent of non-compliance.

DESCRIBE THE MECHANISM FOR ENFORCING THE STATE'S SEPARATION LAW.

The state has employed several mechanisms for enforcing its separation laws (AS 47.10.130 and AS 47.10.190). Collectively, these mechanisms have proven effective in substantially reducing instances of noncompliance with Section 223(a)(13) of the JJDP Act.

The Division of Family and Youth Services (DFYS) is seeking to maximize enforcement of its separation laws by instituting a program of public education, including public service announcements in print and broadcast media, and public bidding for nonsecure attendant care shelter contracts, to alert both the law enforcement community and the public to the dangers inherent in the jailing of juveniles and also to the laws restricting such detention. To this end, a special statewide workshop was held in May, 1989 to educate law enforcement officials about the laws

restricting juvenile detention in adult facilities and about the development of nonsecure attendant care shelters as an alternative to secure detention in adult jails, lockups and correctional centers. Almost immediately following the workshop, four of the facilities which had accounted for high proportions of 1987 and 1988 violations totally terminated the practice of detaining juveniles.

In furtherance of this effort, at the request of DFYS the Department of Public Safety (DPS) has recently amended contracts with seventeen municipal jails to remove any language which could be construed as authorizing admission of juveniles or providing for purchase of such services by DPS. The amended contracts deter law enforcement officials from detaining juveniles in adult facilities by eliminating any ambiguity about the absence of statutory or contractual authorization for noncompliant detention of juveniles.

Enforcement of the state's separation laws is enhanced by the efforts of the Department of Public Safety to evaluate the extent of adherence by law enforcement officials to contractual agreements and by the efforts of DFYS to monitor detention of juveniles in adult jails, lockups and correctional facilities and to notify law enforcement officials of instances of noncompliant detention. Admission records for each municipal jail which is authorized to detain adult offenders under contract with the Department of Public Safety are scrutinized by DPS to identify any violations of contractual agreements. These records are also examined each year by DFYS and facilities are given notification of instances of noncompliant detention of juveniles. Further scrutiny of juvenile detention at adult jails is provided by personnel at non-secure attendant care shelters in 12 communities. Personnel at these shelters are required to notify DFYS of the number of juveniles detained in adult facilities in their communities and must therefore contact law enforcement officials to inquire about detention of juveniles, providing another opportunity to reinforce the absence of authorization for noncompliant detention.

In combination, the above enforcement mechanisms have been effective in reducing the number of instances of noncompliance by 30 percent in just one year since implementation of the state's revised Jail Removal Plan in December, 1987. It is expected that, as law enforcement officials and the public become increasingly aware of the problems associated with placing juveniles in adult facilities, the frequency of noncompliant detention will further decline.

It is recognized that existing enforcement mechanisms can be improved and a plan has been developed to establish a more formal enforcement system. Under AS 47.10.150, which enumerates the general powers of the Department of Health and Social Services,

and AS 47.10.180, which specifically grants the Department authority to "adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state," the Department has broad authority to promulgate and enforce regulations pertaining to confinement of juveniles. A person has been hired by the Division of Family and Youth Services to develop appropriate regulations and this person is beginning the process of promulgating a set of enforceable standards designed to ensure adequate separation of juvenile and adult offenders.

SECTION 223(a)(14)

F. REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS.

1. BASELINE REPORTING PERIOD: Calendar Year 1980

CURRENT REPORTING PERIOD: Calendar Year 1988

2. NUMBER OF ADULT JAILS

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 15 | 15 | 0 |
| Current Data* | 20 | 20 | 0 |

*Includes three facilities classified as adult correctional facilities.

3. NUMBER OF ADULT LOCKUPS

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 0 | 0 | 0 |
| Current Data | 75 | 75 | 0 |

*Adult lockups were not included in the monitoring universe for the baseline year.

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD FOR THE PURPOSE OF VERIFYING SECTION 223(a)(14) COMPLIANCE DATA.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Current Data | 26 | 26 | 0 |
| Adult Jails | 5 | 5 | 0 |
| Adult Correctional Facilities | 1 | 1 | 0 |
| Adult Lockups | 20 | 20 | 0 |

5. TOTAL NUMBER OF ADULT JAILS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 14 | 14 | 0 |
| Current Data* | 18 | 18 | 0 |

*Includes data for three facilities classified as adult correctional facilities.

6. TOTAL NUMBER OF ADULT LOCKUPS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data** | 20 | 20 | 0 |

*Adult lockups were not included in the monitoring universe for the baseline year.

**Includes projection for facilities not submitting data. (See Appendix I for data projection method).

7. TOTAL NUMBER OF ACCUSED JUVENILE CRIMINAL-TYPE OFFENDERS HELD IN ADULT JAILS IN EXCESS OF SIX (6) HOURS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 766 | 766 | 0 |
| Current Data** | 98 | 98 | 0 |

*The monitoring report format for the baseline year did not distinguish between accused and adjudicated criminal-type offenders or between adult jails and adult correctional facilities. Both accused and adjudicated criminal-type offenders held in adult jails and adult correctional facilities (including juveniles accused of or adjudicated delinquent for minor consuming alcohol) are included in the baseline data reported for item F7.

**Includes data for three facilities classified as adult correctional facilities. Current data for adjudicated criminal-type offenders are included in item F9. Current data for juveniles accused of or adjudicated delinquent for minor consuming alcohol are included in item F11.

8. TOTAL NUMBER OF ACCUSED JUVENILE CRIMINAL-TYPE OFFENDERS HELD IN ADULT LOCKUPS IN EXCESS OF SIX (6) HOURS.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data | 14 | 14 | 0 |

*Adult lockups were not included in the monitoring universe for the baseline year.

9. TOTAL NUMBER OF ADJUDICATED CRIMINAL-TYPE OFFENDERS
HELD IN ADULT JAILS FOR ANY LENGTH OF TIME.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 0 | 0 | 0 |
| Current Data** | 43 | 43 | 0 |

*The monitoring report format for the baseline year did not distinguish between accused and adjudicated criminal-type offenders or between adult jails and adult correctional facilities. Both accused and adjudicated criminal-type offenders held in adult jails and adult correctional facilities (including juveniles accused of or adjudicated delinquent for minor consuming alcohol) are included in the baseline data reported for item F7.

**Includes data for three facilities classified as adult correctional facilities. Current data for accused criminal-type offenders are included in item F7. Current data for juveniles accused of or adjudicated delinquent for minor consuming alcohol are included in item F11.

10. TOTAL NUMBER OF ADJUDICATED CRIMINAL-TYPE OFFENDERS
HELD IN ADULT LOCKUPS FOR ANY LENGTH OF TIME.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data | 6 | 6 | 0 |

*Adult lockups were not included in the monitoring universe for the baseline year.

11. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS HELD IN ADULT JAILS FOR ANY LENGTH OF TIME, INCLUDING THOSE STATUS OFFENDERS ACCUSED OF OR ADJUDICATED FOR VIOLATION OF A VALID COURT ORDER.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | 98 | 98 | 0 |
| Current Data** | 229 | 229 | 0 |

*Includes data for three facilities classified as adult correctional facilities. Because juveniles charged with minor consuming alcohol were classified as criminal-type offenders in the baseline year, baseline data for juveniles accused of or adjudicated delinquent for this offense are included in item F7.

**Includes data for three facilities classified as adult correctional facilities. Current data for juveniles accused of or adjudicated delinquent for minor consuming alcohol are also included in this item.

12. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS HELD IN ADULT LOCKUPS FOR ANY LENGTH OF TIME, INCLUDING THOSE STATUS OFFENDERS ACCUSED OF OR ADJUDICATED FOR VIOLATION OF A VALID COURT ORDER.

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|----------------|--------------|---------------|----------------|
| Baseline Data* | n/a | n/a | n/a |
| Current Data | 19 | 19 | 0 |

*Adult lockups were not included in the monitoring universe for the baseline year.

13. TOTAL NUMBER OF ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTION."

Baseline Data: 0

Current Data: 0

Alaska is ineligible for the removal exception because state law requires an initial court appearance within 48 hours, rather

than 24 hours, after a juvenile has been taken into custody (see AS 47.10.140). All adult jails, lockups and correctional facilities in the monitoring universe in 1988 are outside the state's only Standard Metropolitan Statistical Area, but only one provides adequate separation, as required in order for the removal exception to apply. (Note that Alaska is not divided into counties, so no listing of facilities by county is possible.)

14. TOTAL NUMBER OF JUVENILES ACCUSED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF SIX (6) HOURS BUT LESS THAN TWENTY-FOUR (24) HOURS IN ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTIONS."

| | <u>TOTAL</u> | <u>PUBLIC</u> | <u>PRIVATE</u> |
|-------------------------------|--------------|---------------|----------------|
| Baseline Data | 0 | 0 | 0 |
| Current Data | 0 | 0 | 0 |
| Adult Jails | 0 | 0 | 0 |
| Adult Correctional Facilities | 0 | 0 | 0 |
| Adult Lockups | 0 | 0 | 0 |

15. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(14).

Alaska has achieved a 53 percent reduction - relative to the 1980 baseline - in the number of juveniles held in adult jails, lockups and correctional facilities in violation of the jail removal requirement. This reduction has been achieved despite the addition to the monitoring universe of 80 adult jails, lockups and correctional facilities, and despite classification of children accused of or adjudicated delinquent for the offense of minor consuming alcohol as status offenders for purposes of JJDP monitoring in 1988. The 53 percent reduction has also been achieved despite a new OJJDP interpretation of the Formula Grant Regulation under which the monitoring report format has been revised to require that adjudicated criminal-type offenders held in adult facilities for less than six hours be reported as violations. Had OJJDP interpretations of its regulations remained unchanged between 1980 and 1988, Alaska could report a 71 percent reduction in the frequency of noncompliant detention of juveniles. Had the monitoring universe not also expanded during the same period to include facilities which were not monitored in the baseline year, a reduction of 77 percent would have been realized.

Substantial progress has clearly been realized in Alaska's efforts to achieve full compliance with the jail removal requirement, although the gains which have been made have been partially offset - at least on paper - by improvements in the state's capacity to monitor all juveniles who are detained in adult facilities and by regulatory reinterpretations which require the state to count as noncompliant many instances of detention which were not so counted in the baseline year.

Notwithstanding the progress made toward achieving the requirements of Section 223(a)(14), noncompliant detention of juveniles remained a problem in 1988 at several adult jails, lockups and correctional centers. The recently-acquired awareness of additional populations of juveniles which must be targeted for jail removal only serves to add urgency to the search for alternatives to noncompliant detention.

Although at least one instance of noncompliant detention was recorded at nearly all adult jails and correctional centers, and at just over one-fourth of adult lockups, violations of Section 223(a)(14) of the JJDP Act are largely concentrated among a small group of facilities and among one particular type of offender. Over half of all jail removal violations statewide involved status offenders who were accused of or who had been adjudicated delinquent for possession or consumption of alcohol (224 instances), and 43 percent of all violations occurred at the adult jails in Homer (66 violations), Kotzebue (58 violations) and Wrangell (52 violations). In contrast with 1987, however, when there were seven facilities at which more than 30 juveniles were detained in violation of the jail removal requirement, no single facility other than the three referenced above accounted for more than 30 violations and there were only four other facilities at which more than 15 violations were recorded.

Alaska's jail removal effort appears likely to be most effective to the extent that it is concentrated on efforts to provide alternatives to noncompliant detention at the facilities referenced above and to the extent that alternatives to secure detention of juveniles accused of or adjudicated delinquent for possession or consumption of alcohol can be implemented.

There remain substantial barriers to full compliance with the jail removal requirement. The state is, however, pursuing several methods to reduce noncompliant detention. A juvenile detention facility was opened in Bethel in October, 1987 and, by the end of 1989, non-secure attendant care shelters became operational in each of the communities where more than 11 violations of the jail removal requirement occurred in 1988. Additional components of the state's strategy to achieve full compliance with the jail removal requirement are outlined in the revised 1987 Jail Removal Plan.

Finally, the Division of Family and Youth Services (DFYS) is working with individual facilities to curtail record keeping practices which are believed to artificially inflate the number of reported instances of noncompliance. It has come to the attention of DFYS that some facilities create a booking record for each person brought to the facility by law enforcement officials, even if the person is not admitted into secure confinement. Because nonsecure detention in an office or reception area while arrangements are being made for release to parents, etc. is not in violation of the jail removal mandate, records which fail to distinguish between persons who are confined securely and those who are not placed in a secure area contributes to erroneous measurement of the extent of noncompliance.

Collectively, these initiatives are expected to provide an effective means for Alaska to move rapidly toward full compliance with the jail removal requirement.

G. DE MINIMIS REQUEST: NUMERICAL

1. THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

Number of accused juvenile criminal-type offenders held in adult jails and lockups in excess of six (6) hours, accused juvenile criminal-type offenders held in adult jails and lockups in non-MSA's for more than 24 hours, adjudicated criminal type offenders held in adult jails and lockups for any length of time, and status offenders held in adult jails and lockups for any length of time.

TOTAL = 409

Total juvenile population of the State under 18 according to the most recent available U.S. Bureau of Census data or census projection:

166,294 juveniles.

(Source: Alaska Population Overview: 1986 and Provisional 1987 Estimates, Alaska Department of Labor, August, 1989)

If the data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data.

Data:

| | |
|---|-----|
| Accused criminal-type offenders: | 112 |
| Adjudicated criminal-type offenders: | 41 |
| Accused and adjudicated status offenders: | 209 |
| Cases with inadequate offense data | 51 |

Total: 413

Statistical Method of Projection:

Complete data for Calendar Year 1988 were available for all but 14 of the 51 facilities from which data deemed adequate for monitoring purposes were obtained, so projection of data to cover the full 12-month period for these facilities was unnecessary. Projection of data to cover the remainder of Calendar Year 1988 for 14 adult lockups at which data collection was completed during November and December was accomplished by computing, for each facility, the proportion of the year which had elapsed prior to the site visit and weighting each instance of detention at the facility by a factor equal to the reciprocal of that proportion. Thus, for example, each instance of juvenile detention at the lockup in Unalakleet was weighted by a factor of 1.12 (366 days in the year divided by 327 days elapsed prior to the November 22nd site visit). With this weighting procedure, instances of noncompliant detention at each of these 14 facilities during the last few weeks of 1988 (i.e. after data collection was completed) are projected to have occurred at a rate identical to the rate of noncompliant detention during that portion of the year for which data were available.

Data for 49 adult lockups whose records were determined to be inadequate for monitoring purposes were projected by assigning a weight of 2.885 (the reciprocal of the proportion of all adult lockups represented by those included in the analysis) to each case involving detention of a juvenile in the 26 adult lockups from which adequate data were obtained. This method of projection is statistically valid to the extent that the lockups from which adequate data were obtained are representative of all lockups in the monitoring universe. Although the number of adult lockups which were able to submit adequate data was too small to permit random (and therefore representative) sampling (all such facilities were included in the analysis), it is believed that facilities which do not maintain adequate records fail to do so because they in fact detain very few individuals, either adult or juvenile, and are therefore unlikely to detain more juveniles than those which do. Any error in the method used to project data for facilities which were unable to submit adequate data

should therefore result in a higher number of noncompliant cases than actually occurred in these facilities.

In addition to projection of data for facilities for which less than a full year of data were collected and for facilities which did not maintain adequate records in 1988, it was necessary to project data regarding duration of detention for 19 cases for which such data were inadequate and it was also necessary to project data regarding the type of offender (i.e. accused/adjudicated criminal-type offender, accused/adjudicated status offender) for 51 instances of juvenile detention in which the reason for detention was not adequately specified.

In order to determine the appropriate weight to assign each of the 19 cases involving accused criminal-type offenders for which data sufficient to determine the duration of detention were unavailable, the proportion of cases in which detention extended beyond the 6-hour grace period was computed for all cases involving detention of an accused criminal-type offender in an adult facility and for which all variables used in computation of the duration of detention were available. The 19 cases for which duration of detention could not be determined were each assigned a weight of .441, the proportion of noncompliant instances among all cases involving detention in adult facilities of juveniles accused of criminal-type offenses for which sufficient data were available.

Finally, data projection for 51 instances of juvenile detention in adult jails where the reason for detention was inadequately specified required computation of the proportion of accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders among all instances of juvenile detention in such facilities for which records were sufficiently complete to permit identification of the type of offender. Each of the 51 cases in which offense information was inadequate was then assigned a weight of .4175 (the proportion of accused criminal-type offenders among all juveniles detained in adult jails where records were sufficiently complete to permit identification of the type of offender) in calculations employed to determine the total number of accused criminal-type offenders held over six hours. A weight of .0825 (the proportion of adjudicated criminal-type offenders among cases with adequate offense information) was assigned for each of these cases in calculation of the total number of adjudicated criminal-type offenders held for any length of time. Finally, each of the cases for which offense information was inadequate was weighted by a factor of .50 (the proportion of accused and adjudicated status offenders among all cases for which offense information was adequate) in calculations used to determine the total number of accused and adjudicated status offenders held for any length of time.

This weighting procedure - involving data projection for facilities which were unable to submit adequate data, for facilities from which data for less than the full year were obtained, for cases lacking sufficient data to determine the duration of detention and, finally, for cases in which data were insufficient for identification of the type of offender - was implemented by assigning a weight equivalent to the product of the four separate weights to each case. Because the product of the four weights was less than 1.00 for the majority of weighted cases (i.e. those in which either offense data or data related to duration of detention were inadequate), the projected number of noncompliant cases is smaller than the number of unweighted cases upon which it is based.

Calculation of jail removal violations rate per 100,000 population under 18.

| | | | |
|----------------------------------|---|---------|---------------------|
| Total instances of noncompliance | = | 409 | (a) |
| Population under 18 | = | 166,294 | (b) |
| 409 | / | 166,294 | = 245.9 per 100,000 |
| (a) | | (b) | |

2. ACCEPTABLE PLAN

The Division of Family and Youth Services (DFYS) is pursuing several ways to reduce noncompliant detention. The state's revised 1987 Jail Removal Plan, submitted in December, 1987, includes a 12-point strategy for bringing Alaska into full compliance with the JJDP Act. That document describes several policy initiatives designed to reduce or eliminate noncompliant detention of juveniles. Significant among these initiatives is the development and implementation of a network of nonsecure attendant care shelters in twelve communities which have experienced high levels of noncompliant juvenile detention. In order to spur development of this nonsecure alternative to detention in adult jails, lockups and correctional facilities, DFYS recently hosted a conference - attended by law enforcement officials and an array of service providers from communities throughout the state - which focused on development of nonsecure attendant care shelters.

A second initiative identified in the revised 1987 jail removal plan entails implementation of a policy restricting detention of intoxicated juveniles at juvenile detention facilities operated by DFYS. In 1988, as in previous years, a high proportion of violations of the jail removal requirement involved juveniles who were charged with minor consuming alcohol. Although the policy, which was introduced in December, 1987, extends only to juvenile detention facilities, it is expected to

have a significant educative effect and as such to provide added impetus to efforts to reduce detention of such children in adult facilities as well.

The revised 1987 jail removal plan also references the opening of a new juvenile detention facility in Bethel in October, 1987. This alternative to incarceration in the Bethel Correctional Center has eliminated any need to incarcerate juveniles at a facility which was used for the detention of 47 juveniles in 1987, including 38 juveniles held in violation of the jail removal requirement.

Another important element of the state's plan to eliminate noncompliant detention of juveniles entails the creation of a full-time staff position in the Division of Family and Youth Services (DFYS) which will take responsibility for promulgating and enforcing regulations restricting detention of juveniles in adult facilities. The Department of Health and Social Services, of which DFYS is a part, has broad authority under AS 47.10.150 and AS 47.10.180 for oversight of facilities used for detention of juveniles. Because of the absence of personnel, this regulatory authority has until this year remained an unexploited resource in the state's efforts to achieve compliance with the mandates of the JJDP Act. With the addition of the new staff position, DFYS is in the process of developing enforceable regulations which are expected to have a substantial impact on the incidence of noncompliant detention of juveniles.

Finally, the Governor of Alaska has expressed his commitment to the jail removal effort in an executive proclamation stating his concerns with respect to the jailing of juveniles and proclaiming his support for the efforts of the Division of Family and Youth Services to work with other state agencies "to develop regulations which reduce detention of children in adult facilities, ensure safe and appropriate conditions for children who are detained, and provide for collection and maintenance of accurate records on each youth admitted, detained and released."

3. RECENTLY ENACTED CHANGE IN STATE LAW

In May, 1988, the Alaska Legislature passed a bill specifying the conditions under which runaway juveniles may be detained. This legislation, which became effective in October, 1988, was explicitly designed to comply with the deinstitutionalization requirement of the JJDP Act, but it is also expected to aid efforts to bring the state into compliance with the jail removal mandate. In addition to specifying the conditions under which a runaway juvenile may be detained in a juvenile detention facility, the statute clearly forbids detention of a runaway juvenile "in a jail or secure facility other than a juvenile detention home" (AS 47.10.141).

By clearly delineating the circumstances under which status offenders may lawfully be detained in Alaska, this statutory change serves notice to law enforcement officials that detention of runaway juveniles in adult jails, lockups and correctional facilities is unlawful under state law. This change is certain to have a positive impact on the state's ability to achieve full compliance with the jail removal mandate within a reasonable time.

H. DE MINIMIS REQUEST: SUBSTANTIVE

1. THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

- a. Were all instances of noncompliance in violation of or departures from State law, court rule, or other statewide executive or judicial policy?

AS 47.10.130 provides in part that "(n)o minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime." Nearly all instances of noncompliant detention of juveniles accused of or adjudicated delinquent for criminal-type offenses in 1988 were in violation of this and/or other related statutes. Detention of juveniles charged with minor consuming alcohol in facilities which do not provide adequate separation of juveniles from incarcerated adults, unless consistent with the protective custody provisions of AS 47.37.170, is also violative of this statute. There were 375 instances of noncompliant detention of juveniles accused of or adjudicated delinquent for criminal-type offenses or minor consuming alcohol which were violative of AS 47.10.130 and only 10 (at the adult jail in Seward) which, because detention occurred at a facility which provides adequate separation of juveniles and adults, were consistent with the statute.

There was no statutory authorization whatsoever in 1988 for detention in any adult facility of status offenders or non-offenders other than those accused of minor consuming alcohol. Detention of runaway juveniles and juveniles charged with curfew violations therefore lacked any statutory authorization. There were 24 instances of noncompliant juvenile detention in which the juvenile was charged with a status offense other than minor consuming alcohol and for which detention in an adult jail, lockup or correctional facility lacked statutory authorization.

- b. Do the instances of noncompliance indicate a pattern or practice, or do they constitute isolated instances?

Although at least one instance of noncompliant detention was recorded at nearly all adult jails and correctional centers, and at just over one-fourth of adult lockups, such instances of noncompliant detention appear to constitute isolated instances at most facilities. Only seven facilities reported more than 15 instances of noncompliant detention and, of these, only three - the adult jails at Homer, Kotzebue and Wrangell - detained more than 30 juveniles in violation of the jail removal requirement.

- c. Are existing mechanisms for enforcement of the State law, court rule, or other statewide executive or judicial policy such that the instances of noncompliance are unlikely to recur in the future?

The state has employed several mechanisms for enforcing AS 47.10.130, AS 47.10.141 and AS 47.10.190, all of which restrict detention of juveniles in adult facilities. Collectively, these mechanisms have proven effective in substantially reducing instances of noncompliance with Section 223(a)(14) of the JJDP Act.

The Division of Family and Youth Services (DFYS) is seeking to maximize enforcement of the laws referenced above by instituting a program of public education, including public service announcements in print and broadcast media, and public bidding for nonsecure attendant care shelter contracts, to alert both the law enforcement community and the public to the dangers inherent in the jailing of juveniles and also to the laws restricting such detention. To this end, a special statewide workshop was held in May, 1989 to educate law enforcement officials about the laws restricting juvenile detention in adult facilities and about the development of nonsecure attendant care shelters as an alternative to secure detention in adult jails, lockups and correctional centers. Almost immediately following the workshop, four of the facilities which had accounted for high proportions of 1987 and 1988 violations totally terminated the practice of detaining juveniles.

In furtherance of this effort, at the request of DFYS the Department of Public Safety (DPS) has recently amended contracts with seventeen municipal jails to remove any language which could be construed as authorizing admission of juveniles or providing for purchase of such services by DPS. The amended contracts deter law enforcement officials from detaining juveniles in adult facilities by eliminating any ambiguity about the absence of statutory or contractual authorization for noncompliant detention of juveniles.

Enforcement of the state laws restricting juvenile detention in adult facilities is enhanced by the efforts of the Department of Public Safety to evaluate the extent of adherence by law enforcement officials to contractual agreements and by the efforts of DFYS to monitor detention of juveniles in adult jails, lockups and correctional facilities and to notify law enforcement officials of instances of noncompliant detention. Admission records for each municipal jail which is authorized to detain adult offenders under contract with the Department of Public Safety are scrutinized by DPS to identify any violations of contractual agreements. These records are also examined each year by DFYS and facilities are given notification of instances of noncompliant detention of juveniles. Further scrutiny of juvenile detention at adult jails is provided by personnel at non-secure attendant care shelters in 12 communities. Personnel at these shelters are required to notify DFYS of the number of juveniles detained in adult facilities in their communities and must therefore contact law enforcement officials to inquire about detention of juveniles, providing another opportunity to reinforce the absence of authorization for noncompliant detention.

In combination, the above enforcement mechanisms have been effective in reducing the number of instances of noncompliance by 32 percent in just one year since implementation of the state's revised Jail Removal Plan in December, 1987. It is expected that, as law enforcement officials and the public become increasingly aware of the problems associated with placing juveniles in adult facilities, the frequency of noncompliant detention will further decline.

It is recognized that existing enforcement mechanisms can be improved and a plan has been developed to establish a more formal enforcement system. Under AS 47.10.150, which enumerates the general powers of the Department of Health and Social Services, and AS 47.10.180, which specifically grants the Department authority to "adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state," the Department has broad authority to promulgate and enforce regulations pertaining to confinement of juveniles. A person has been hired by the Division of Family and Youth Services to develop appropriate regulations and this person is beginning the process of promulgating a set of enforceable standards designed to eliminate noncompliant detention of juveniles in adult jails, lockups and correctional facilities.

- d. Describe the State's plan to eliminate the noncompliant incidents and to monitor the existing enforcement mechanism.

Alaska's plan to eliminate noncompliant incidents is outlined in the revised 1987 Jail Removal Plan. Salient features of

the Jail Removal Plan include the following: (1) placing a full-time JJDP Project Coordinator in the Division's Central Administration Office; (2) development of alternatives to detention, including development of nonsecure holdover attendant care models in several rural communities and secure holdover attendant care models in others; (3) cooperative efforts with the Department of Public Safety on issues as maintenance of appropriate booking data on juveniles, sight and sound separation requirements, the JJDP-mandated 6-hour rule and a prohibition on detention of status offenders; (4) launch an education and training campaign to inform the public of the problems inherent in inappropriate detention and jailing of youth and of the availability of effective alternatives; and (5) implementation of regulations governing detention of youth in adult jails under authority provided in Alaska Statutes 47.10.180(a), which authorizes the Department of Health and Social Services to adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state.

APPENDIX I: METHOD OF ANALYSIS

All aspects of data analysis for the 1988 monitoring report were performed on the DEC/VAX 8800 mainframe computer at the University of Alaska Anchorage, using the SPSSx Data Analysis System, Release 3.0.

I. DATA COLLECTION AND DATA ENTRY

Data were entered into a composite data file from the following sources:

- A. Certified photocopies of original client billing sheets (booking logs) for all adult jails were obtained from the Department of Public Safety, which contracts for adult confinement with each facility in Alaska which meets the definition of adult jail as defined in the Formula Grant Regulation. While the Department of Public Safety specifically excludes detention of children from these contracts, it requires full disclosure of all admissions, both juvenile and adult.
- B. Certified photocopies of original booking records were also obtained from McLaughlin Youth Center in Anchorage, the Johnson Youth Center in Juneau and the adult lockups in Mekoryuk, Anaktuvuk Pass, Atkasuk, Deadhorse/Prudhoe Bay, Point Hope, Nuksut, Wainwright, Tok, Tanana, and Teller.
- C. Self-report data were obtained from the juvenile detention centers in Fairbanks, Bethel and Nome, the adult correctional center in Ketchikan, the Mat-su Pretrial Facility in Palmer and the adult lockups in Karluk, Old Harbor and Akutan. Self-report data were used to supplement reproductions of original records submitted by Johnson Youth Center and the adult lockup in Tanana. Self-report data were verified on-site at the Bethel Youth Facility and the adult lockup in Tanana.
- D. Data were collected on-site at the adult lockups in Chevak, Cold Bay, Saint Paul, Unalakleet, Delta Junction, Yakutat, Galena, King Cove, Saint Michael, Noorvik, Cantwell, Nenana and Fort Yukon.
- E. The adult lockups in Hooper Bay and Kotlik submitted data which were determined to be inadequate for monitoring purposes.

For all adult jails, lockups and correctional facilities except the adult jail at Kotzebue, data were entered for all persons born on or after January 1, 1970 or for whom no birthdate or

an obviously incorrect birthdate had been recorded. Prior to June, 1988, the adult jail at Kotzebue submitted separate client billing logs for adults and juveniles which did not indicate the birthdates of persons held. For the period from January, 1988 through May, 1988, data for all persons listed as juveniles were entered. Beginning in June, 1988, the Kotzebue jail adopted a new record keeping format which included a column for date of birth, so data for only those cases involving persons born on or after January 1, 1970 were entered for the period from June, 1988 through December, 1988. For all juvenile detention facilities, data were entered for all persons detained (regardless of birthdate) for offenses which were not manifestly criminal-type offenses or violations of conditions of probation imposed following adjudication for a criminal-type offense. In order to distinguish between adjudicated criminal-type offenders and adjudicated status offenders during data entry, each instance of detention in which the offense was identified as a probation violation was checked against a list, compiled by the Division of Family and Youth Services, of all juveniles who had been adjudicated delinquent pursuant to a charge of possession or consumption of alcohol at any time on or after January 1, 1985.

For each case, the following data were entered: Facility type, facility identifier, initials of juvenile, date of birth, date of admission, time of admission, charge (up to three charges could be entered), date of release, time of release, total hours (if included in records submitted).

Cases with missing or obviously incorrect birthdates were selected out prior to analysis. There were 27 such cases (excluding cases at the adult jail in Kotzebue and the five facilities operated by the Division of Family and Youth Services, all of which were included in the analysis). For 13 of these cases the booking log contains an adult/juvenile column. The individual is identified as an adult in 12 of the 13 entries. The single case involving an individual identified in the booking log as a juvenile was included in the analysis; all other persons for whom age could not be determined were selected out prior to analysis. The decision to exclude cases with insufficient data for determination of age was based on discussions with superintendents at several affected facilities, each of whom, on the basis of personal recollection of approximate ages of these persons, identified all of the persons for whom birthdates were missing as adults.

II. CLASSIFICATION OF OFFENDERS

The following procedures were used in classifying juveniles as accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders for purposes of JJDP monitoring:

- A. Juveniles who were arrested for the following were classified as accused criminal-type offenders for purposes of JJDP monitoring: offenses proscribed in Alaska criminal law, traffic violations and traffic warrants, fish and game violations, failure to appear, contempt of court.
- B. Juveniles charged with probation violations or violations of conditions of release were classified as adjudicated criminal-type offenders unless conditions of probation had been imposed pursuant to an adjudication for possession or consumption of alcohol, in which case the juvenile was classified as an adjudicated status offender (see below).

Juveniles taken into custody pursuant to warrants and detention orders were also classified as adjudicated criminal-type offenders, unless additional information (including case-by-case comparison with the list referenced above of juveniles adjudicated delinquent for possession or consumption of alcohol) indicated a more appropriate classification. In order to verify this method of classifying these cases, all instances of detention pursuant to a warrant or court order (except those for which additional information was sufficient to properly classify the juvenile) at Johnson Youth Center, McLaughlin Youth Center, Nome Youth Facility and Bethel Youth facility were verified through a check of facility records. A determination was made that classification of all juveniles detained pursuant to warrants or detention orders (except where available information indicated a more appropriate classification) as adjudicated criminal-type offenders would minimize the likelihood of errors in classification and that any errors which did result from this method of coding would lead to reporting of a higher number of jail removal violations than actually occurred. On the basis of the case-by-case verification at the four juvenile detention centers, the comparison of each case with the list of juveniles adjudicated for alcohol offenses and the absence of any statutory authorization for secure court-ordered detention of status offenders other than those accused of or adjudicated for possession or consumption of alcohol, it was deemed highly unlikely that any status offenders or nonoffenders would be misclassified as criminal-type offenders through this method.

Juveniles transferred from one juvenile detention facility to another were also classified, absent additional information, as adjudicated criminal-type offenders, as were a small number of juveniles for whom

the offense listed in official records was one of the following: juvenile hold, juvenile probation hold, detention hold, delinquent minor. A determination was made, based on the same considerations as were used in classifying juveniles arrested pursuant to warrants and detention orders, that these labels were unlikely to be applied to juveniles who were not adjudicated criminal-type offenders, that classifying them as such would minimize the likelihood of misclassification and that any misclassification which might result would increase, rather than decrease, the reported incidence of noncompliance with the mandates of the JJDP Act.

- C. Juveniles detained for the following were classified as accused status offenders for purposes of JJDP monitoring: possession or consumption of alcohol, curfew violations, runaway, and protective custody in excess of the lawful duration as prescribed in AS 47.30.705 and AS 47.37.170.
- D. In addition to juveniles identified as children in need of aid under the provisions of AS 47.10.010 or comparable statutes governing juvenile court jurisdiction in other states, juveniles arrested pursuant to a warrant or detention order and juveniles detained for probation violations were classified as adjudicated status offenders if their names and birthdates were included on a list of juveniles adjudicated for possession or consumption of alcohol on or after January 1, 1985 and if they had not subsequently been adjudicated delinquent for a criminal-type offense.
- E. Juveniles detained in adult jails, lockups and correctional facilities for protective custody under AS 47.30.705 (which provides for emergency detention of mentally ill persons where "considerations of safety do not allow initiation of involuntary commitment procedures..." or AS 47.37.170 (which provides for emergency detention of persons who are incapacitated by alcohol in a public place) were counted as violations of Section 223(a)(13) of the JJDP Act. However, because juveniles are accorded the same treatment given adults taken into custody under the protective custody statutes, these juveniles were determined to be outside the scope of the OJJDP definitions of criminal-type offender, status offender and nonoffender. The presence of juveniles lawfully detained under protective custody statutes is therefore not reflected in sections of this report pertaining to Section 223(a)(12)(A) and Section 223(a)(14) of the JJDP Act.

III. DATA PROJECTION

Complete data for Calendar Year 1988 were available for all but 14 of the 51 facilities from which data deemed adequate for monitoring purposes were obtained, so projection of data to cover the full 12-month period for these facilities was unnecessary. Projection of data to cover the remainder of Calendar Year 1988 for 14 adult lockups at which data collection was completed during November and December was accomplished by computing, for each facility, the proportion of the year which had elapsed prior to the site visit and weighting each instance of detention at the facility by a factor equal to the reciprocal of that proportion. Thus, for example, each instance of juvenile detention at the lockup in Unalakleet was weighted by a factor of 1.12 (366 days in the year divided by 327 days elapsed prior to the November 22nd site visit). With this weighting procedure, instances of noncompliant detention at each of these 14 facilities during the last few weeks of 1988 (i.e. after data collection was completed) are projected to have occurred at a rate identical to the rate of noncompliant detention during that portion of the year for which data were available.

Data for 49 adult lockups whose records were determined to be inadequate for monitoring purposes were projected by assigning a weight of 2.885 (the reciprocal of the proportion of all adult lockups represented by those included in the analysis) to each case involving detention of a juvenile in the 26 adult lockups from which adequate data were obtained. This method of projection is statistically valid to the extent that the lockups from which adequate data were obtained are representative of all lockups in the monitoring universe. Although the number of adult lockups which were able to submit adequate data was too small to permit random (and therefore representative) sampling (all such facilities were included in the analysis), it is believed that facilities which do not maintain adequate records fail to do so because they in fact detain very few individuals, either adult or juvenile, and are therefore unlikely to detain more juveniles than those which do. Any error in the method used to project data for facilities which were unable to submit adequate data should therefore result in a higher number of noncompliant cases than actually occurred in these facilities.

In addition to projection of data for facilities for which less than a full year of data were collected and for facilities which did not maintain adequate records in 1988, it was necessary to project data regarding duration of detention for a small number of cases for which such data were inadequate and it was also necessary to project data regarding the type of offender (i.e. accused/adjudicated criminal-type offender, accused/adjudicated status offender) for 51 instances of juvenile detention in which the reason for detention was not adequately specified.

Projection of data regarding duration of detention for 18 instances of detention of accused status offenders where records were insufficient to determine whether the 24-hour grace period permitted under 28 CFR Part 31.303(f)(5)((i)(C) had been exceeded proceeded as follows: The proportion of cases in which detention extended beyond the 24-hour grace period was computed for all cases involving detention of status offenders and for which all variables used in computation of the duration of detention were available. The 18 cases for which duration of detention could not be determined were each assigned a weight of .043, the proportion of noncompliant instances among all cases involving detention of status offenders for which all pertinent data were available.

In order to determine the appropriate weight to assign each of the 19 cases involving accused criminal-type offenders for which data sufficient to determine the duration of detention were unavailable, the proportion of cases in which detention extended beyond the 6-hour grace period was computed for all cases involving detention of an accused criminal-type offender in an adult facility and for which all variables used in computation of the duration of detention were available. The 19 cases for which duration of detention could not be determined were each assigned a weight of .441, the proportion of noncompliant instances among all cases involving detention in adult facilities of juveniles accused of criminal-type offenses for which sufficient data were available.

Finally, data projection for 51 instances of juvenile detention in adult jails where the reason for detention was inadequately specified required computation of the proportion of accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders among all instances of juvenile detention in such facilities for which records were sufficiently complete to permit identification of the type of offender. Each of the 51 cases in which offense information was inadequate was then assigned a weight of .4175 (the proportion of accused criminal-type offenders among all juveniles detained in adult jails where records were sufficiently complete to permit identification of the type of offender) in calculations employed to determine the total number of accused criminal-type offenders held over six hours in violation of the jail removal requirement (item F7). A weight of .0825 (the proportion of adjudicated criminal-type offenders among cases with adequate offense information) was assigned for each of these cases in calculation of the total number of adjudicated criminal-type offenders held for any length of time in violation of the jail removal requirement (item F9). Each of the cases for which offense information was inadequate was weighted by a factor of .50 (the proportion of accused and adjudicated status offenders among all cases for which offense information was adequate) in calculations used to determine the total number

of accused and adjudicated status offenders held for any length of time in violation of the jail removal requirement (item F11). For purposes of determining the number of violations of the deinstitutionalization requirement, each of the 51 cases in which offense information was inadequate was assigned a weight of .4975 (the proportion of accused status offenders among all juveniles detained in adult jails where records were sufficiently complete to permit identification of the type of offender) in calculations employed to determine the total number of accused status offenders held over 24 hours (item B5). Finally, in calculations used to determine the total number of adjudicated status offenders held for any length of time in violation of the deinstitutionalization requirement (item B6), these 51 cases were each assigned a weight of .0025 (the proportion of adjudicated status offenders among all juveniles detained in adult jails where records were sufficient for identification of the type of offender).

This weighting procedure - involving data projection for facilities which were unable to submit adequate data, for facilities from which data for less than the full year were obtained, for cases lacking sufficient data to determine the duration of detention and, finally, for cases in which data were insufficient for identification of the type of offender - was implemented by assigning a weight equivalent to the product of the four separate weights to each case. Because the product of the four weights was less than 1.00 for the majority of weighted cases (i.e. those in which either offense data or data related to duration of detention were inadequate), the projected number of noncompliant instances for both the deinstitutionalization and jail removal sections of this report is smaller than the number of unweighted cases upon which it is based.

APPENDIX II: ATTACHMENTS

Letter to Yvonne Chase, Director, Division of Family and Youth Services. Paul Steiner, State Relations and Assistance Division, OJJDP.

Legal Opinion Letter: Alcohol Offenses. John J. Wilson, Office of General Counsel, OJJDP.

Memorandum: Detention Admission Criteria. Richard Illias, Youth Corrections Administrator, Division of Family and Youth Services.

Executive Proclamation: Jail Removal. Steve Cowper, Governor, State of Alaska.

Alaska Statutes: Selected Provisions.

- AS 04.16.050. Possession or consumption by persons under the age of 21.
- AS 47.10.010. Jurisdiction.
- AS 47.10.130. Detention.
- AS 47.10.140. Temporary detention and detention hearing.
- AS 47.10.141. Runaway and missing minors.
- AS 47.10.150. General powers of department over juvenile institutions.
- AS 47.10.180. Operation of homes and facilities.
- AS 47.10.190. Conditions governing detention.
- AS 47.10.290. Definitions.
- AS 47.30.705. Emergency detention for evaluation.
- AS 47.30.915. Definitions.
- AS 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol.



U.S. Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Washington, D.C. 20531

NOV 23 1987

Yvonne M. Chase, Director
Department of Health and Social Services
Division of Family and Youth Services
Pouch H-05
Juneau, Alaska 99811

Dear Ms. Chase:

As we discussed during the course of the audit of Alaska's JJDP monitoring system, one of the more critical findings of the audit is that minors charged with alcohol violations have not been counted as status offenders in Alaska's Annual Monitoring Reports. It appeared from the audit that counting this class of offenders as status offenders will have a profound effect on the reported level of compliance with Sections 223(a)(12)(A) and 223(a)(14) of the JJDP Act.

For this reason, we are delaying the review of Alaska's 1986 Monitoring Report until we receive a revised report that counts minors charged with alcohol violations as status offenders. Please review the OJJDP definition of status offender (see 28 CFR 31.304) for guidance on this matter. Also, please note the legal opinion I forwarded to Russell Webb on October 19, 1987.

We cannot recommend award of Alaska's FY 1988 Formula Grant until we have received a satisfactory Monitoring Report and have determined that Alaska has achieved the levels of compliance necessary for eligibility to receive the FY 1988 award.

I have discussed this matter with Russell Webb and I will be glad to answer any questions you might have.

Sincerely,

Paul Steiner
Juvenile Justice Specialist
State Relations and Assistance
Division

NOV 23 1987

August 30, 1979

Legal Opinion Letter
(Retyped from copy)

TO: Ms. Pam Roylance
Juvenile Justice Specialist
Bureau of Law Enforcement
Planning Commission
Boise, Idaho 82720

This is in response to your request for an opinion as to whether Idaho must include alcohol offenses by a juvenile, i.e., illegal possession or consumption, in the annual monitoring report required by Section 223(a)(14) of the Juvenile Justice Act to determine a State's progress toward meeting the Section 223(a)(12)(A) deinstitutionalization of status offenders requirement.

Your letter states that under Idaho Code Section 23-949 it is a misdemeanor for any person under the age of 19 to consume or possess alcoholic beverages. The law thus applies both to juveniles age 17 and under who are subject to juvenile court jurisdiction and to 18 year olds who are adults under Idaho law. The issue is whether, because 18 year old adults fall under the alcoholic beverage law, this would remove alcohol offenses committed by juveniles from the status offense category to the delinquency (criminal-type) offense category.

It is the opinion of this office that an alcohol offense that would be a crime only for a limited class of young adult persons must be classified as a status offense if committed by a juvenile.

Discussion

This particular issue has not previously been addressed by this office. In the Office of General Counsel Legal Opinion 77-13, December 31, 1976, we distinguished the three categories of criminal-type, status, and non-offender juvenile who are subject to juvenile court jurisdiction. Criminal-type offenders and status offenders were categorized on the basis of whether particular conduct of the juvenile would, in accordance with Section 223(a)(12)(A), "be a crime if committed by an adult" under the laws of a jurisdiction. The opinion did not, however, reach the question of whether an adult should be interpreted to mean any adult or all adults.

It is apparent from the legislative history of the 1974 Juvenile Justice Act's Section 223(a)(12) requirement for deinstitutionalization of status offenders that Congress considered it inappropriate, both from equal protection and effective treatment standpoints, to place juveniles who were not alleged or adjudicated to have engaged in substantive criminal conduct in juvenile detention or correctional facilities.

The Senate Judiciary Committee Report on the 1974 Act (S. Rep. No. 93-1011, July 16, 1974) strongly makes the point that non-criminal juveniles should be channeled to social service and other appropriate resources outside the juvenile system:

"... it is well documented that youths whose behavior is non-criminal—although certainly problematic and troublesome--have inordinately preoccupied the attention and resources of the juvenile justice system. Nearly 40 percent (one-half million per year) of the children brought to the attention of the juvenile justice system have committed no criminal act, in adult terms, and are involved simply because they are juveniles. These juvenile status offenders generally are inappropriate clients for the formal police courts and corrections process of the juvenile justice system. These children and youth should be channeled to those agencies and professions which are mandated and in fact purport to deal with the substantive human and social issues involved in these areas." (p. 221)

The results of such a diversion of status offenders would, according to the Report, be as follows:

"...if the status offender were diverted into the social service delivery network, the remaining juveniles would be those who have committed acts which, under any circumstances, would be considered criminal. It is essential that greater attention be given to serious youth crime, which has increased significantly in recent years. These children and youth are appropriate clients for the formal process of the juvenile justice system." (Emphasis supplied) (p. 222)

The clear implication from this language is that the status offender category includes conduct that would, under circumstances, not be considered criminal. In Idaho this would include possession or consumption of alcoholic beverages by anyone over 18.

In its 1974 publication entitled, Status Offenders: A Working Definition, the Council of State Governments defines the term "status offense" as follows:

"A "status offense," as used in the literature and in the delinquency field, is any violation of law, passed by the state or local legislative body . . . which would not be a crime if committed by an adult, and which is specifically applicable to youth because of their minority."

The definition adds an additional element to the concept of a status offense—that it is an offense applicable to a group of persons because of their minority or youth. It would be inconsistent with this concept to define "status offense" solely in terms of whether particular conduct is proscribed based on a person's reaching the age of majority or the age at which juvenile court jurisdiction ends.

In sum, it is more consistent with the overall thrust of the Juvenile Justice Act, the existing legislative history, and the concept of "status" as a determinant of proscribed behavior to define an offense that is applicable both to juveniles and a narrow range of young adults as a status offense.

Under the Idaho law an 18 year old violator of the alcoholic beverage law is an adult status offender, and as such, outside the scope of the Act's coverage. Those under the age of 18, who violate the alcoholic beverage law, are juvenile status offenders within the purview of the Section 223(a)(12)(A) requirement. Therefore, they would have to be considered in the State's monitoring report on compliance with the deinstitutionalization requirement.

John J. Wilson
Attorney Advisor
Office of General Counsel

MEMORANDUM

State of Alaska

TO: Regional Administrators
Intake Officers
Institutional Superintendents


DATE: December 18, 1987

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Detention Admission
Criteria

FROM: Richard Illias 
Youth Corrections Administrator

Several years ago instructions were issued to discontinue the practice of placing status offenders in our juvenile detention facilities. At that time the offense of minor consuming alcohol was interpreted to be a "criminal" offense under state law. Interpretation of the Juvenile Justice and Delinquency Prevention Act of 1974 by the U.S. Attorney General categorizes offenses such as minor consuming alcohol as status offenses. The logic is that those offenses can only be committed by a person of a certain age status. Even though the offense is criminal in many states between the ages of 18 and 21, it is none the less a status offense for both juveniles and a small group of adults.

In order to comply with Federal mandates and maintain eligibility of OJJDP block grants, it is necessary for intake units and institutions to revise detention screening and admission practices.

EFFECTIVE IMMEDIATELY YOUTH ARRESTED FOR THE OFFENSE OF MINOR CONSUMING MAY NO LONGER BE DETAINED IN DIVISION YOUTH FACILITIES UNLESS:

1. They are detained as probation violators (detention criteria number 8 and a petition is filed for revocation of probation.
2. Youth is also an absconder with a valid court order (warrant) for detention.
3. The youth has been charged with another offense sufficient to warrant detention.
4. The youth's identity cannot be determined.
5. The youth refused to sign a promise to appear.

Prohibition against detention of youth charged with minor consuming alcohol has no effect on the authority to detain a youth who is incapacitated by alcohol and requires protective custody pursuant to AS47.37.170. Protective custody admissions require a pre-admission medical examination and written certificate which attests to two conditions:

1. The youth's level of intoxication meets the definition of incapacitated by alcohol. That level is defined by statute as "a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety."

2. The youth does not require either immediate or constant medical attention until the level of intoxication is reduced.

Persons admitted to detention facilities under the PC Statute must have the reason for detention marked "protective custody - AS47.37." Both detention booking records and intake records should show that designation as the reason for detention. Intake records such as the intake log should show under the offense column as both MCA and PC.

Please make sure that staff adhere to the PC requirement and that those youth be released from detention within 12 hours or sobering up whichever comes first.

RFI:ag

cc: Yvonne Chase
Donna Bownes

Enclosures

STATE OF ALASKA



Executive Proclamation by Steve Cowper, Governor

Confining children in adult jails is not in the best interest of Alaska's children or the public. In 1986 as many as 427 children were detained in adult jails and lockups throughout the state. Alaska statutes prohibit confinement of children in adult jails and lockups unless they are assigned to separate quarters so that they not view or communicate with adult prisoners.

The practice of jailing children with adults often leads to depression or suicide attempts. The risk of those children experiencing emotional, physical and sexual abuse is also increased.

The federal Juvenile Justice Delinquency Prevention Act mandates that states improve their juvenile justice systems by:

1. eliminating the practice of detaining children charged with status offenses;
2. separating children from adults by sight and sound when both are detained in the same jail, lockup, or other correctional facility;
3. identifying and monitoring all facilities which detain children;
4. eliminating the practice of detaining children in any adult jail, lockup, or correctional facility.

NOW, THEREFORE, I, Steve Cowper, Governor of the State of Alaska, do hereby proclaim my support for the Department of Health and Social Services to work with the Departments of Corrections and Public Safety, the public, and municipalities to develop regulations which reduce detention of children in adult facilities, ensure safe and appropriate conditions for children who are detained, and provide for collection and maintenance of accurate records on each youth admitted, detained and released.

DATED: April 14, 1989

Done by —

A handwritten signature of Steve Cowper in dark ink.

Steve Cowper, Governor,
who has also authorized
the seal of the State of
Alaska to be affixed to
this proclamation.



Sec. 04.16.050. Possession or consumption by persons under the age of 21. A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b). (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983)

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian, or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child;

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, AS 11.76.105 relating to the purchase of tobacco by a minor, a fish and game statute or regulation under AS 16, or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of an offense specified in this subsection shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the Department of Health and Social Services, and payment of support money to the department may be ordered.

(d) The provisions of AS 47.10.020 — 47.10.085 do not apply to driver's license proceedings under AS 28.15.185. The court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982; am § 5 ch 39 SLA 1985; am § 17 ch 50 SLA 1987; am § 6 ch 125 SLA 1988; am § 3 ch 130 SLA 1988)

Sec. 47.10.130. Detention. No minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately. (§ 14 art I ch 145 SLA 1957)

Sec. 47.10.140. Temporary detention and detention hearing.

(a) A peace officer may arrest a minor who violates a law or ordinance in the officer's presence, or whom the officer reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. The officer may have the minor detained in a juvenile detention facility if in the officer's opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court, the minor's parents or guardian, and the Department of Health and Social Services of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing, a minor may be detained only by court order.

(f) *[Repealed, § 3 ch 42 SLA 1985.]*

(g) *[Repealed, § 3 ch 42 SLA 1985.]* (§ 15 art I ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 1, 2 ch 128 SLA 1972; am §§ 1, 3 ch 42 SLA 1985)

Sec. 47.10.141. Runaway and missing minors. (a) Upon receiving a written, telephonic, or other request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. The report shall also be submitted to the missing persons information clearinghouse under AS 18.65.620. As soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minor described in (a) of this section if the minor is not otherwise subject to arrest or detention. The peace officer shall honor the minor's preference to (1) return the minor to the legal custodian if the legal custodian consents to the return; (2) take the minor to a nearby location agreed to by the minor and the legal custodian; or (3) take the minor to an office specified by the Department of Health and Social Services, a program for runaway minors licensed by the department under AS 47.10.310, or a facility or contract agency of the department. If an office specified by the department, a licensed program for runaway minors, or a facility or contract agency of the department does not exist in the community, the officer shall take the minor to another suitable location and promptly notify the department. A minor under protective custody may not be housed in a jail or other detention facility. Immediately upon taking a minor into protective custody, the officer shall advise the minor orally and in writing of the right to social services under AS 47.10.142(b), and, if known, the officer shall advise the legal custodian that the minor has been taken into protective custody.

(c) A minor may be taken into emergency protective custody by a peace officer and placed into temporary detention in a juvenile detention home in the local community if there has been an order issued by a court under a finding of probable cause that (1) the minor is a runaway in wilful violation of a valid court order issued under AS 47.10.080 or 47.10.142(f), (2) the minor's current situation poses a severe and imminent risk to the minor's life or safety, and (3) no reasonable placement alternative exists within the community. For the purposes of this subsection, a risk may not be considered severe and imminent solely because of the general conditions for runaway minors in the community, but shall be assessed in view of the specific behavior and situation of the minor. A minor detained under this subsection shall be brought before a court on the day the minor is detained, or if that is not possible, within 24 hours after the detention for a hearing to determine the most appropriate placement in the best interests of the minor. A minor taken into emergency protective custody under this subsection may not be detained for more than 24 hours, except as provided under AS 47.10.140. Emergency protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in a licensed program for runaway minors, as defined in AS 47.10.390. (§ 2 ch 42 SLA 1985; am § 3 ch 72 SLA 1988; am §§ 1, 2 ch 144 SLA 1988)

Sec. 47.10.150. General powers of department over juvenile institutions. The Department of Health and Social Services may

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of children in need of aid or delinquent minors;

(2) adopt plans for construction of juvenile homes, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance and operation of all juvenile detention homes, facilities, and institutions;

(4) inspect periodically each juvenile detention home, facility, or other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) adopt the regulations necessary to carry out this chapter;

(9) accept donations, gifts or bequests of money or other property for use in construction of juvenile homes, institutions or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or correctional school or treatment institution all minors committed to its custody under this chapter. (§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977)

Sec. 47.10.180. Operation of homes and facilities. (a) The Department of Health and Social Services shall adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state.

(b) The department may enter into contracts with cities and other governmental agencies for the detention of juveniles before and after commitment by juvenile authorities. A contract may not be made for longer than one year. (§ 8 art II ch 145 SLA 1957; am § 3 ch 97 SLA 1960; am § 6 ch 104 SLA 1971)

Sec. 47.10.190. Conditions governing detention. When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults. (§ 9 art II ch 145 SLA 1957)

Sec. 47.10.290. Definitions. In this chapter, unless the context otherwise requires,

(1) "care" or "caring" under AS 47.10.010(a)(2)(A), 47.10.120(a) and 47.10.230(c), means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "department" means the Department of Health and Social Services.

(6) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(7) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(8) "minor" is a person under 18 years of age. (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977; am §§ 91, 92 ch 138 SLA 1986)

Sec. 47.30.705. Emergency detention for evaluation. A peace officer, a psychiatrist or physician who is licensed to practice in this state or employed by the federal government, or a clinical psychologist licensed by the state Board of Psychologists and Psychological Examiners who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to self or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. The peace officer or mental health professional shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility. (§ 1 ch 84 SLA 1981; am § 8 ch 142 SLA 1984)

Sec. 47.30.915. Definitions. In AS 47.30.660 — 47.30.915

(1) "commissioner" means the commissioner of health and social services;

(2) "court" means a superior court of the state;

(3) "department" means the Department of Health and Social Services;

(4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;

(5) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 — 47.30.915, or a medical facility licensed under AS 18.20.020 or operated by the federal government;

(6) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in AS 47.30.660 — 47.30.915 who conduct evaluations in places in which no staffed evaluation facility exists;

(7) "gravely disabled" means a condition in which a person as a result of mental illness

(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness or death highly probable if care by another is not taken; or

(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason or behavior causing a substantial deterioration of the person's previous ability to function independently;

(8) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility, for a continual period of 24 hours or longer;

(9) "least restrictive alternative" means mental health treatment facilities and conditions of treatment which are

(A) no more harsh, hazardous, or intrusive than necessary to achieve the treatment objectives of the patient; and

(B) involve no restrictions on physical movement nor supervised residence or inpatient care except as reasonably necessary for the administration of treatment or the protection of the patient or others from physical injury;

(10) "likely to cause serious harm" means a person who

(A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting or threatening that harm;

(B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse or substantial property damage to another person; or

Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to the person's home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, the person may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers the person shall arrange for transportation.

(d) A person who, after medical examination, is found to be incapacitated by alcohol at the time of admission or to have become incapacitated at any time after admission, may not be detained at a facility after the person is no longer incapacitated by alcohol. A person may not be detained at a facility if the person remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless the person is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the patient's family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, the patient's request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until the person is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service or a detention facility, is taking the person into protective custody and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270(9) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1-4 ch 101 SLA 1976)

